

Application No. 10/707,526  
Docket No. A3-1700  
Amendment dated April 18, 2005  
Reply to Office Action of January 18, 2005

### **REMARKS**

In the Office Action, the Examiner reviewed claims 1-20 of the above-identified US Patent Application, with the result that a restriction requirement between apparatus claim 1-13 and method claims 14-20 was maintained, a election requirement between eight species was maintained, and the claims elected by Applicants in their response filed November 22, 2004 (method claims 14, 18, and 19, corresponding to Species "D" - Figure 2) were rejected. In response, Applicants have amended the specification and claims as set forth above. More particularly:

The specification has been reviewed and amended to address clerical matters.

Independent apparatus claim 1 has been rewritten as a method claim, and is substantially equal in scope to original method claim 14.

Dependent apparatus claims 2-13, which depend from claim 1, have also been rewritten as method claims.

Independent claim 14 has been amended to incorporate the limitation from claim 8 that requires contacting and positioning the food products within the feed passage with a plurality of resilient members extending radially inward into the feed passage toward a central axis thereof.

Application No. 10/707,526  
Docket No. A3-1700  
Amendment dated April 18, 2005  
Reply to Office Action of January 18, 2005

Applicants believe the above amendments do not present new matter, and respectfully request favorable reconsideration and allowance of claims 1-20 in view of the above amendments and the following remarks.

### **Restriction and Election Requirements**

In their response filed November 22, 2004, Applicants elected to prosecute method claims 14-20 (Group II) on the merits. In view of the amendments to the claims, in which all apparatus claims 1-13 (Group I) have been rewritten as method claims, Applicants respectfully believe the basis for the restriction requirement has been rendered moot.

Also in their previous response, Applicants elected Species D (Figure 2) for prosecution on the merits. Applicants believe that amended claims 1, 6-9, 14, 18, and 19 read on Species D. Applicants further believe that claims 1, 2, 14, and 15 read on Species A, claims 1, 3, 14, and 16 read on Species B, claims 1-5 and 14-17 read on Species C, claims 1, 6-9, 14, 18, and 19 read on Species E, claims 1, 6-8, 14, 18, and 19 read on Species F, claims 1, 6, 7, 12-14, and 20 read on Species G, and claims 1, 10-14, and 20 read on Species H. Finally, Applicants believe that independent claims 1 and 14 are generic (as was original method claim 14), such that all of claims 1-20 would be prosecuted on the merits if claims 1 and/or 14 are finally held to be allowable.

Application No. 10/707,526  
Docket No. A3-1700  
Amendment dated April 18, 2005  
Reply to Office Action of January 18, 2005

### **Rejection under 35 USC §102**

Independent claim 14 and its dependent claims 18 and 19 were rejected under 35 USC §102 as being anticipated by U.S. Patent No. 2,006,643 to Leo. Applicants respectfully request reconsideration of this rejection in view of the following comments.

Because independent claim 1 has been amended to be substantially equal in scope to original independent claim 14, which has been amended to incorporate additional limitations, Applicants will address this rejection as if it were applied to each of independent claims 1 and 14.

As noted in §2131 of the MPEP:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the ...claim. The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e. identity of terminology is not required. (Citations omitted).

The basis of the rejection was that

Leo discloses all the recited steps of the invention including:

a) individually delivering food products to a cutting means . .  
. by causing the food products to free-fall through a feed  
passage (at 20) and then free-fall through the cutting means  
entirely under the force of gravity (page 2, left col., lines 56-

Application No. 10/707,526  
Docket No. A3-1700  
Amendment dated April 18, 2005  
Reply to Office Action of January 18, 2005

57) and on a path that is approximately normal to the cutting plane;

. . . .

However, Leo does not disclose "causing the food products to . . . free-fall through the cutting means entirely under the force of gravity." Instead, the passage in Leo cited by the Examiner states

material within the vertical receptacle 20 falls by gravity or by mechanical force, exerted by the plunger, *onto the plate 37*. The plunger arm 43 is *then* forced inwardly by pushing on the handle 44, thereby forcing the knife 42 through the material to cut the slice therefrom. (Emphasis added.)

Therefore, in contrast to Applicants' independent claims 1 and 14, Leo never discloses or even suggests that material free-falling through the receptacle 20 also free-falls through the knife 42. Instead, *the material is cut only while resting on the plate 37*. Such an operation is evident from Figure 3 of Leo.

In view of the above, Leo does not anticipate independent claims 1 or 14 or any of their dependent claims under the test for anticipation set forth at MPEP §2131.

Leo also fails to disclose or suggest contacting and positioning the food products with a plurality of resilient members extending radially inward into the feed passage toward a central axis thereof, as required by claims 8 and 9 (which depend from claim 1) and independent claim 14. Therefore, Leo also

Application No. 10/707,526  
Docket No. A3-1700  
Amendment dated April 18, 2005  
Reply to Office Action of January 18, 2005

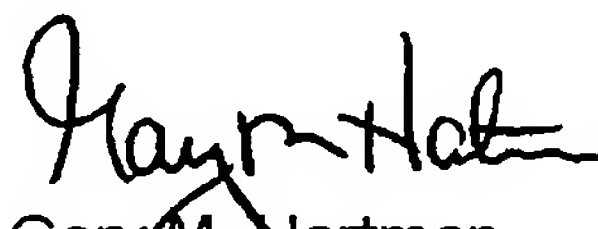
does not anticipate claims 8, 9, and 14-20 under the test for anticipation set forth at MPEP §2131.

For all of the above reasons, Applicants respectfully request withdrawal of the rejection under 35 USC §102 and, on the basis of generic claims 1 and 14, respectfully request prosecution of claims 1-20 on the merits.

**Closing**

In view of the above, Applicants respectfully request that their patent application be given favorable reconsideration. Should the Examiner have any questions with respect to any matter now of record, Applicants' representative may be reached at (219) 462-4999.

Respectfully submitted,

By   
Gary M. Hartman  
Reg. No. 33,898

April 18, 2005  
Hartman & Hartman, P.C.  
Valparaiso, Indiana 46383  
TEL.: (219) 462-4999  
FAX: (219) 464-1166